

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Moses Backman, Jr., )  
Plaintiff, ) C/A No. 2:10-0599-MBS  
vs. )  
Department of Veterans Affairs, Attorney )  
General of the United States, and United )  
States Attorney for the District of South )  
Carolina, )  
Defendants. )  
\_\_\_\_\_  
)

**O R D E R**

Plaintiff Moses Backman, Jr., proceeding pro se and in forma pauperis, filed a complaint on March 9, 2010, alleging that he was wrongly diagnosed and subjected to an unnecessary operation while under the care of the Department of Veterans' Affairs. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Bristow Merchant for pretrial handling. The Magistrate Judge reviewed the complaint pursuant to the provisions of 28 U.S.C. § 1915. On April 22, 2010, the Magistrate Judge issued a Report and Recommendation in which he noted that Plaintiff has not exhausted his administrative remedies as required by 28 U.S.C. 2675(a). Accordingly, the Magistrate Judge recommended that the complaint be summarily dismissed without prejudice and without issuance and service of process. Plaintiff filed no objections to the Report and Recommendation.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is

made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has carefully reviewed the record and concurs in the recommendation of the Magistrate Judge. The court adopts the Report and Recommendation and incorporates it herein by reference. The within action is dismissed *without prejudice* and without issuance and service of process to allow Plaintiff to exhaust his administrative remedies.

**IT IS SO ORDERED.**

/s/ Margaret B. Seymour  
United States District Judge

Columbia, South Carolina

May 18, 2010.

**NOTICE OF RIGHT TO APPEAL**

**Plaintiff is hereby notified that he has the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.**